

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

Terri Pepper,

Plaintiff,

Case No. 4:20-cv-02154

v.

**Life Protect 24/7, Inc. d/b/a
Life Protect 24/7,**

Defendant.

**PLAINTIFF'S SUPPLEMENT TO MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT**

Terri Pepper (Plaintiff), by and through her attorneys, Kimmel & Silverman, P.C., files the instant supplement to the memorandum of law in opposition to the motion to dismiss filed by Defendant Life Protect 24/7, Inc. d/b/a Life Protect 24/7 (Defendant):

Plaintiff stated a Viable Claim under §302.101 of the Texas Business & Commerce Code

§302.101 of the Texas Business & Commerce Code prohibits sellers from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.

Plaintiff alleges in the Amended Complaint that “Defendant violated § 302.101 of the Texas Business & Commercial Code when its representatives engaged in continuous and repetitive telephone solicitation of Plaintiff without obtaining a registration certificate from the Office of the Secretary of State.” (Am. Comp. ¶ 41.)

That is a straightforward assertion which must be taken as true under Fed. R. Civ. P. 12(b)(6) at the pleading stage. Plaintiff pleaded in the amended complaint that Defendant made

solicitation calls to Plaintiff's cell phone. Plaintiff will demonstrate this through discovery. Defendant has not provided any basis to short-circuit the process and dismiss this count.

CONCLUSION

For these reasons, and the reasons stated in the opposition to the motion to dismiss, Defendant's motion to dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amy L.B. Ginsburg, hereby certify that I served a true and correct copy of the foregoing supplemental statement to the below parties via ECF.

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